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**Workers'
Compensation
Board**

**Commission
des accidents
du travail**

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July 26, 1989

When writing the Board
please quote the above
file number.

Indiquez le n° de dossier
dans toute correspondance
avec la Commission.

Dear Madam/Sir:

As you know, Bill 162 received third reading in the Legislative Assembly on July 24, and received Royal Assent on July 26. Though the majority of the provisions of the Bill such as the non-economic loss, wage loss, and reinstatement provisions come into force at a later date, there are some important benefits for certain injured workers available as of the date of Royal Assent.

For your information, I attach a set of guidelines that has been developed to assist WCB staff in dealing with the provisions that are now in effect. The key consideration in developing the guidelines was to assist Board staff in making accurate decisions quickly.

You will understand that these guidelines have been developed in a very short time, and that they represent the best attempt at interpreting complex legislation. As the Board becomes more familiar with the legislation, there may, of course, be refinements to these guidelines.

If you have questions about the Bill's provisions, you may call the Workers' Compensation Board's hotline - 926-8444 for Toronto area callers and 1-800-387-5520 for callers outside Toronto.

Yours very truly,

Paul Holyoke
Director
Operational Policy Branch



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GUIDELINES FOR
THE ADMINISTRATION OF
SECTION 135 OF THE WORKERS' COMPENSATION ACT
TRANSITION SUPPLEMENTS

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GUIDELINES FOR
THE ADMINISTRATION OF
SECTION 135 OF THE WORKERS' COMPENSATION ACT
TRANSITION SUPPLEMENTS

A. BACKGROUND

Section 135 of the Workers' Compensation Act came into effect on July 26, 1989. The remainder of the Bill will not come into force until a date identified upon proclamation, likely to be sometime in January, 1990.

The implementation of s.135 means that workers suffering a wage loss and currently in receipt of permanent disability awards may be eligible for a supplement under s.135(4). A supplement is also available where the Board determines that a worker is likely to benefit from a vocational rehabilitation program in accordance with s.135(2).

As well, all workers who are not receiving permanent disability awards as of July 26, 1989, but who suffer permanent disabilities resulting from injuries which occurred prior to the date of implementation of the rest of Bill 162, will be eligible to receive supplements under s.135.

The following are general guidelines for implementation of the section beginning with an overview of the procedure to be utilized, followed by guidelines for the various concepts contained in s.135.

B. GENERAL OVERVIEW OF SECTION 135

There are three types of workers who will be considered under s.135. These are:

Type 1 - Worker who is in receipt of a permanent disability award but no supplement on July 26, 1989.

- ° Workers who are in receipt of a permanent disability award on July 26, 1989, and who could be eligible for a supplement under s.135, will be contacted by letter and requested to respond to the attached questionnaire (Appendix A).
- ° When the questionnaire is returned, the answers are reviewed to determine if there is a wage loss.
- ° For workers not suffering a wage loss, no supplement is issued.
- ° If there is a wage loss, the worker is immediately provided with a supplement pursuant to s.135(4). This supplement is payable in all these cases from July 26, 1989.
- ° If upon review of the questionnaire it appears that the worker is likely to benefit from vocational rehabilitation, then the worker should be assessed for a vocational rehabilitation program during which a s.135(2) supplement is payable.

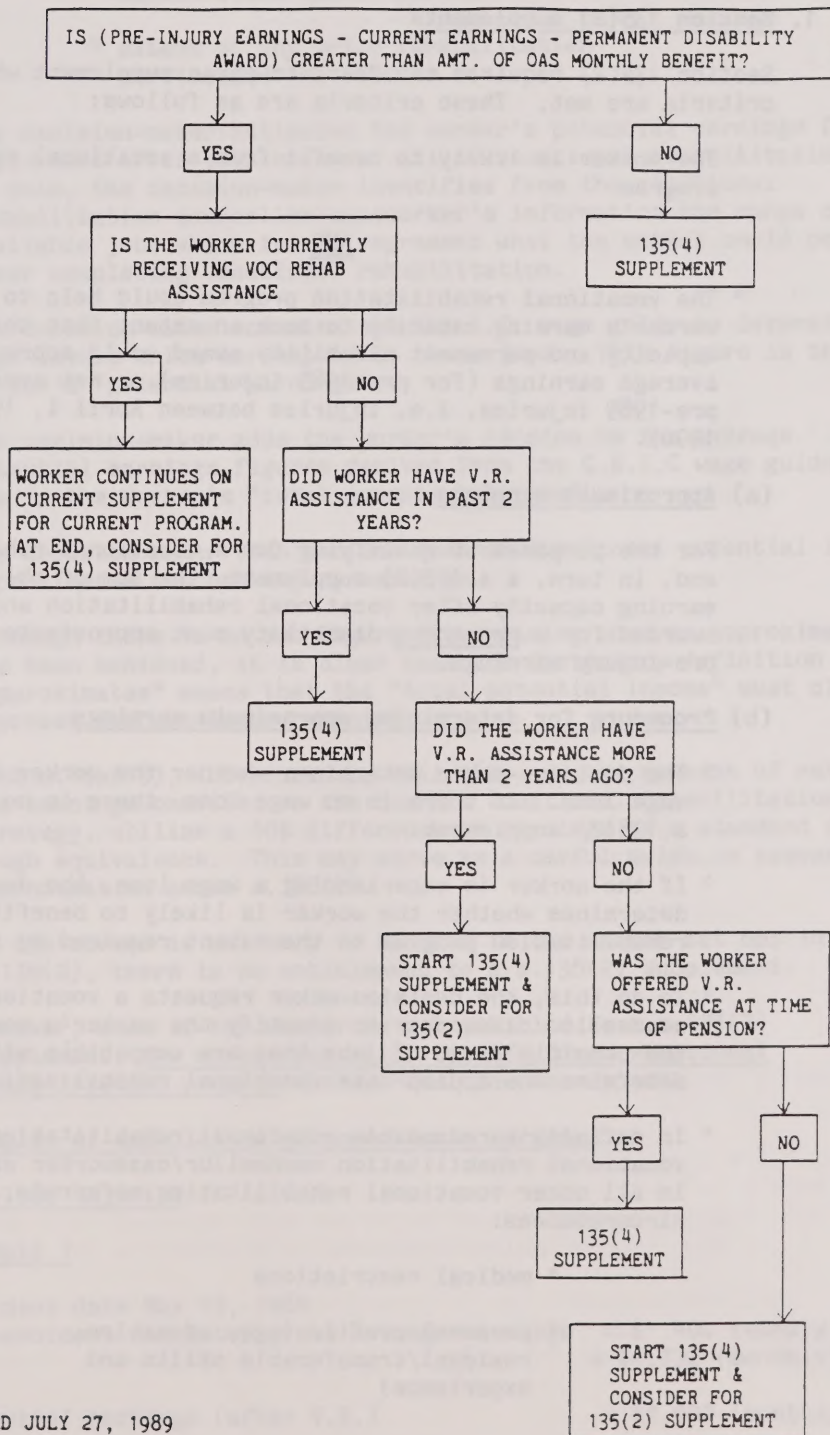
- The chart on p.3 indicates the decisions that transition controllers might reach based on responses to the questionnaire.
- If a worker undertakes a vocation rehabilitation program, and consequently is provided with a s.135(2) supplement, the worker may again receive a supplement under s.135(4) in the event the worker's earning capacity is not increased to the extent described in s.135(2). This is discussed in the general guidelines for the section.

Type 2 - Worker is in receipt of permanent disability award and a supplement on July 26, 1989

- All workers in receipt of permanent disability awards along with a supplement under either s.45(5) of the pre-1989 Act or s.43(5) of the pre-1985 Act on July 26, 1989, shall continue to receive such supplements until the terms of the supplements expire.
- A full supplement expires when the worker completes the vocational rehabilitation program in which he/she is participating. This may mean that there are extensions of current full supplements that are being paid for the period that a worker is on a vocational rehabilitation program.
- When any full s.45(5) (or s.43(5)) supplement expires, the worker will receive a supplement under s.135(4) if there is a wage loss, though a worker may be considered for a supplement under s.135(2).
- Wage top-up and work adjustment supplements will be treated differently. Once the term of an existing wage top-up or work adjustment supplement is over, no extensions can be given. Nor will there be new wage top-up or work adjustment supplements: any worker who would have been considered for one of these supplements should be considered for a s.135(4) supplement instead.
- In cases of supplements under s.45(7), a worker will automatically be given a supplement under s.135(4) when the existing supplement expires.

Type 3 - Worker is not in receipt of permanent disability award on July 26, 1989, but injured prior to date the remainder of Bill comes into force

- All workers injured prior to the date the remainder of Bill 162 comes into force (expected to be January, 1990), and who receive a permanent disability award after July 26, 1989 are entitled to be considered for supplements under s.135.
- All such workers shall be considered for a s.135(2) supplement as set out in the general guidelines to the section.
- If the worker does not meet the criteria set out in the Bill for a s.135(2) supplement, then the worker is automatically entitled to a supplement under s.135(4) from the date of permanent disability rating.



REVISED JULY 27, 1989

C. SPECIFIC GUIDELINES FOR SECTION 135

1. Section 135(2) supplements

Section 135(2) requires the Board to pay a supplement when certain criteria are met. These criteria are as follows:

- ° The worker is likely to benefit from a vocational rehabilitation program

AND

- ° The vocational rehabilitation program could help to increase the worker's earning capacity to such an extent that the worker's earning capacity and permanent disability award would approximate the worker's average earnings (for pre-1985 injuries) or net average earnings (for pre-1989 injuries, i.e. injuries between April 1, 1985 and January, 1990).

(a) Approximate earnings

For the purposes of qualifying for a vocational rehabilitation program and, in turn, a s.135(2) supplement, the sum of the worker's expected earning capacity after vocational rehabilitation and the amount awarded for a permanent disability must approximate the worker's pre-injury earnings.

(b) Procedure for determining approximate earnings

- ° The decision-maker determines whether the worker is experiencing a wage loss. If there is no wage loss, there is no entitlement to a s.135(2) supplement.
- ° If the worker is experiencing a wage loss, the decision-maker determines whether the worker is likely to benefit from a vocational rehabilitation program to the extent required by s.135(2).
- ° To do this, the decision-maker requests a vocational rehabilitation counsellor/caseworker to identify the worker's vocational skills, the possible range of jobs that are compatible with these skills and determine the appropriate vocational rehabilitation options.
- ° In defining a reasonable vocational rehabilitation program, a vocational rehabilitation counsellor/caseworker should consider, as in all other vocational rehabilitation referrals, the following circumstances:
 - ° medical restrictions
 - ° personal profile (age, education, residual/transferable skills and experience)

- ° geographic location of the job
market/local labour market
- ° extent of any prior rehabilitation
service and the results.
- ° The decision-maker estimates the worker's potential earnings from employment after completion of all of vocational rehabilitation. To do this, the decision-maker identifies from the vocational rehabilitation counsellor/caseworker's information the range of available jobs which fairly represent what the worker could perform after completing vocational rehabilitation.
- ° The decision-maker consults the C.E.I.C. wage guide to determine the wage levels which correspond to those jobs. This figure is the worker's "potential earnings".
- ° The decision-maker adds the worker's pension to the average potential earnings figures derived from the C.E.I.C wage guide. This sum is the worker's "total potential income".
- ° The decision maker then decides whether the "total potential income" approximates the pre-injury earnings.
- ° Although there is no set figure for defining when an approximation has been achieved, it is clear that the dictionary definition of "approximates" means that the "total potential income" must closely approach the pre-injury earnings.
- ° Both s.45a(13), introduced by Bill 162, and the concept of returning the earnings profile, in the Board's Vocational Rehabilitation Strategy, utilize a 10% difference in earnings as a standard for rough equivalence. This may serve as a useful guide in assessing approximation under s.135(2).
- ° If the worker is unlikely to benefit in the manner set out in s.135(2), there is no entitlement to a s.135(2) supplement.
- ° However, even if the worker is not entitled to a s.135(2) supplement, the worker may still qualify for a vocational rehabilitation program without full income support.

(c) Examples of calculation of approximate earnings

Pre-1985 injuries

Example 1

Accident date May 19, 1984

Pre-accident escalated gross average earnings = \$ 400 (weekly)
= \$1,732 (monthly)

Potential earnings (after V.R.) = \$1,000 (monthly)

Current P.D. (50%)	= \$ 650 (monthly)
Total potential income (after V.R.)	= potential earnings + p.d. = \$1,000 + \$650 = \$1,650

The decision-maker must assess whether \$1,650 approximates \$1,732.

Example 2

Accident date May 19, 1984

Pre-accident escalated gross average earnings	= \$ 400 (weekly)
	= \$1,732 (monthly)

Potential earnings (after V.R.)	= \$ 800 (monthly)
Current P.D. (50%)	= \$ 650 (monthly)

Total potential income (after V.R.)	= potential earnings + p.d. = \$ 800 + \$ 650 = \$1,450
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This example results in a earnings gap which must be assessed to determine whether \$1,450 approximates \$1,732.

Example 3

Pre-accident earnings above ceiling

Accident date May 19, 1984

Pre-accident escalated gross earnings	= \$ 800 (weekly)
	= \$ 3,466 (monthly)
Ceiling	= \$32,700
	= \$ 2,723 (monthly)

Potential average earnings (after V.R.)	= \$ 1,000 (monthly)
Current P.D. (50%)	= \$ 1,221 (monthly)
Total potential income (after V.R.)	= potential earnings + p.d. = \$ 1,000 + \$1,221 = \$ 2,221

This example results in an earnings gap which must be assessed to determine if \$2,221 approximates \$2,723.

Pre-1989 injuries

Example 1

Accident date Sept. 6, 1987

Pre-accident escalated <u>net</u> earnings	= \$ 400 (weekly) = \$1,732 (monthly)
Potential earnings (after V.R.)	= \$1,000 (net monthly)
P.D. (50%)	= \$ 779 (monthly)
Total potential income	= potential earnings + p.d. = \$1,000 + \$ 779 = \$1,779

The decision-maker must decide whether \$1,779 approximates \$1,732.

(d) The meaning of "vocational rehabilitation program"

Section 135(2) supplements can only be paid while the worker is participating in a vocational rehabilitation program: s.135(3).

A vocational rehabilitation program is defined in s.54a(11) to include the following:

- ° vocational training
- ° language training
- ° general skills upgrading
- ° refresher courses
- ° employment counselling (including training in job search skills and in the identification of employment opportunities)
- ° assistance in seeking employment; and
- ° assistance in adapting the workplace of an employer to accommodate the worker.

Contemplated vocational rehabilitation programs are those which help to restore a worker's earnings profile to approximate his/her pre-injury earnings when combined with the permanent disability pension (see procedure for determining approximate earnings above).

A vocational rehabilitation program does not include vocational rehabilitation services as defined by s.54a(4). As a result, a s.135(2) supplement is not paid during participation in the following activities:

- ° consultation

- ° provision of information
- ° planning and design of a vocational rehabilitation program.

(e) Duration of a s.135(2) supplement

Section 135(3) requires a supplement to be paid only while the worker is participating in a Board approved vocational rehabilitation program. "Participation" begins on the date the Board formally signs the plan approving the program and continues until the program is terminated in any way.

(f) Maximum amount of a s.135(2) supplement for a worker with a pre-1985 injury

Section 135(9) provides that the sum of the supplement, the amount awarded for s.135(4) disability and 75% of the worker's average earnings, if any, after the injury, cannot exceed 75% of the worker's pre-injury earnings. This is calculated as follows:

- 1) Convert pre-accident average weekly earnings to a monthly figure with regard to any inflation factors and the current statutory limitation.
- 2) Convert the post accident average weekly earnings to a monthly figure and deduct from the pre-accident average earnings calculated in 1).
- 3) Calculate 75% of the difference as determined in 2).
- 4) Deduct the value of the monthly escalated pension from the amount calculated in 3).
- 5) Convert the figure resulting from the calculation in 4) to a percentage which will represent the supplement to be paid.

Formula

X = pre- accident escalated average weekly earnings x. 4.3333.
Y = post accident average weekly earnings x. 4.3333.
Z = earnings loss before deduction of pension.
P = escalated monthly pension.
S = amount payable through supplement.

$$(X-Y) \times .75 = Z$$

$$Z - P = S$$

$$\% \text{ supplement} = \frac{S \times 100}{\text{current } 100\% \text{ monthly pension}}$$

(g) Maximum amount of a s.135(2) supplement for a worker with a pre-1989 injury

Section 135(10) provides that the sum of the supplement, the amount awarded for permanent disability and 90% of the worker's net average earnings, if any, after the injury cannot exceed 90% of the worker's pre-injury net average earnings. This is calculated as follows:

- 1) Adjust pre-accident gross average earnings with regard to any inflation factors noting the current statutory limitation.
- 2) Calculate the pre-accident net average earnings from the amount determined in 1) and also the post accident net average earnings by applying the net claim for exemption information from TD-1.
- 3) Deduct the post-accident net average earnings from the pre-accident net average earnings.
- 4) Calculate 90% of the difference determined in 3).
- 5) Convert the amount in 4) to a monthly figure.
- 6) Deduct the value of the monthly escalated pension.
- 7) Convert the figure resulting from the calculation in 6) to a percentage which will represent the supplement to be paid.

Formula

X = pre-accident escalated net average earnings
Y = post-accident net average earnings
Z = earning loss before pension deduction
P = escalated monthly pension
S = amount payable through supplement

$$(X - Y) \times .90 \times 4.3333 = Z$$

$$Z - P = S$$

$$\% \text{ supplement} = \frac{S \times 100}{\text{current } 100\% \text{ monthly pension}}$$

(h) Effect of payments under Canada Pension Plan or Quebec Pension Plan on a s.135(2) supplement (s.135(11))

Pre-1985 injuries

If the worker is in receipt of Canada Pension or Quebec Pension disability payments in respect of the injury, these payments will be deducted from the pre-accident gross average earnings adjusted for inflation creating a revised gross average earnings which can then be converted into the compensation rate. The statutory maximum earnings ceiling applies.

Pre-1989 injuries

If the worker is in receipt of Canada Pension or Quebec Pension disability payments in respect of the injury, these payments will be deducted from the average earnings adjusted for inflation, creating a revised average earnings from which compensation will be calculated. The statutory maximum earnings ceiling applies.

(i) Period of payment for s.135(2) supplement

A s.135(2) supplement should be paid on a monthly basis, in accordance with the current Board processing system and administrative practice.

(j) Examples of calculations of s.135(2) supplements

Example 1 - Section 135(2) Supplement for a pre-1985 injury with post-accident earnings

Accident date may 19, 1984

Pre-accident gross average earnings - \$325.00 week

Post accident gross average earnings - \$150.00 week

Escalated 8% pension - \$107.50 month

$$\begin{aligned} \$325.00 \times 4.3333 &= 1408.32 \times 5\% \times 5\% \times 1.7\% \\ &\quad \times 4.4\% \times 4.3\% \times 4.2\% \\ &= 1791.65 \\ 150.00 \times 4.3333 &= 650.00 \text{ deduct} \\ &\quad 1141.65 \times .75 \\ &= 856.24 \\ \text{deduct monthly p.d.} &- 107.50 \\ S &= 748.74 \\ \% \text{ supplement} &= \frac{748.74 \times 100}{1343.75} \\ &= 55.72\% \end{aligned}$$

Example 2 - Section 135(2) Supplement for a pre-1985 injury with C.P.P. deduction

Accident date Sept. 1, 1983

Pre-accident gross average earnings - \$475.00 week

Gross C.P.P. benefit - \$374.50 month

Escalated 50% pension - \$981.97 month

$$\begin{aligned} \$475.00 \times 4.3333 &= 2058.32 \times 5\% \times 5\% \times 1.7\% \\ &\quad \times 4.4\% \times 4.3\% \times 4.2\% \\ &= 2618.57 \\ \text{deduct C.P.P.} &- 374.50 \\ &\quad 2244.07 \times .75 \\ &= 1683.05 \\ \text{deduct monthly p.d.} &- 981.97 \\ S &= 701.08 \end{aligned}$$

$$\begin{aligned}\% \text{ supplement} &= \frac{701.08 \times 100}{1963.94} \\ &= \underline{35.69\%}\end{aligned}$$

Example 3 - Section 135(2) supplement for a pre-1989 injury with post-accident earnings

Accident date August 3, 1985
Pre-accident gross average earnings - \$500 week
Post-accident gross average earnings - \$250 week
Net claim code - 01
Escalated 15% pension - \$253.94

$$\begin{aligned}&\$500.00 \times 1.7\% \times 4.4\% \times 4.3\% \times 4.2\% \\ &= 576.95 \\ &\quad 434.09 \text{ (Pre-acc. N.A.E. escalated)} \\ \text{deduct} &\quad - 208.21 \text{ (Post-acc. N.A.E.)} \\ &\quad \underline{225.88 \times .90} \\ &= 203.29 \times 4.3333 \\ &= 880.93 \\ \text{deduct monthly p.d.} &\quad - 253.94 \\ &\quad S = 626.99 \\ \% \text{ supplement} &= \frac{626.99 \times 100}{1692.93} \\ &= \underline{37.03\%}\end{aligned}$$

Example 4 - Section 135(2) supplement for a pre-1989 injury with C.P.P. deduction

Accident date Sept. 14, 1987
Pre-accident gross average earnings - \$450.00 week
Gross C.P.P. benefit - \$75.00 week
Net claim code - 03
Escalated 25% pension - \$378.68 month

$$\begin{aligned}&\$450.00 \times 4.3\% \times 4.2\% = 489.06 \\ \text{deduct C.P.P.} &\quad - 75.00 \\ &\quad \underline{414.06 \text{ revised gross (see section 135(11))}} \\ &\quad 335.40 \text{ (n.a.e. adjusted)} \\ &\quad 335.40 \times .90 \\ &= 301.86 \times 4.3333 \\ &= 1308.05 \\ \text{deduct monthly p.d.} &\quad - 378.68 \\ &\quad S = 929.37 \\ \% \text{ supplement} &= \frac{929.37 \times 100}{1514.70} \\ &= \underline{61.36\%}\end{aligned}$$

2. SECTION 135(4) SUPPLEMENTS

(a) Provision of supplements under s.135(4)

The Board is required to pay a s.135(4) supplement in two circumstances. These are:

- ° if a worker suffering a wage loss does not meet the requirements of s.135(2), that is, the worker is not likely to benefit from a vocational rehabilitation program to the extent necessary; or
- ° if a worker's earning capacity after participation in a vocational rehabilitation program under s.135(2) has not increased to the extent that such capacity and the amount of the permanent disability award approximate the worker's pre-injury average or net average earnings. The requirement for approximating the pre-injury earnings has been discussed above in relation to s.135(2) supplements.

(b) Duration of a s.135(4) supplement

A s.135(4) supplement continues until the worker becomes eligible for old age security benefits under the federal Old Age Security Act. A decision-maker can presume that a worker who turns 65 years old is eligible for old age security benefits.

Workers on a s.135(4) supplement who are nearing the age of 65 should be notified of the impending loss of supplement and advised that they may wish to apply for old age security benefits.

The worker may, however, establish by other evidence that he/she does not meet the eligibility requirements for old age security benefits. The best evidence of this would be a formal rejection letter to an application for such benefits by the relevant federal authority, Health and Welfare Canada.

As well, pursuant to s.135(13), the Board must review the s.135(4) supplement in the twenty-fourth and sixtieth month following the date of award and recalculate the amount of the supplement in accordance with s.135(9) and (10) discussed below.

(c) Maximum amount of a s.135(4) supplement

There are two types of maximums for s.135(4) supplements. One type relates to the amount of pre-injury earnings, and the other type relates to the maximum for old age security benefits. These are discussed below.

(i) Maximum amount for a worker with a pre-1985 injury

Section 135(9) says that the sum of the supplement, the amount awarded for permanent disability and 75% of the worker's average earnings, if any, after the injury, cannot exceed 75% of the worker's pre-injury earnings. This is calculated as follows:

- 1) Convert pre-accident gross average weekly earnings to a monthly figure with regard to any inflation factors and the current statutory limitation.
- 2) Convert the post accident average weekly earnings to a monthly figure and deduct from the pre-accident average earnings calculated in 1).
- 3) Calculate 75% of the difference as determined in 2).
- 4) Deduct the value of the monthly escalated pension from the amount calculated in 3).
- 5) Convert the figure resulting from the calculation in 4) to a percentage of the permanent disability award which will represent amount of the supplement for payment processing purposes.

Formula

X = pre accident average weekly escalated earnings x. 4.3333.

Y = post accident average weekly earnings x. 4.3333.

Z = net earnings loss before deduction of pension.

P = escalated monthly pension.

S = amount payable through supplement.

$$(X-Y) \times .75 = Z$$

$$Z - P = S$$

$$\% \text{ supplement} = \frac{S \times 100}{\text{current 100\% monthly pension}}$$

(ii) Maximum amount of s.135(4) supplement for a worker with a pre-1989 injury

Section 135(10) provides that the sum of the supplement, the amount awarded for permanent disability and 90% of the worker's net average earnings, if any, after the injury cannot exceed 90% of the worker's pre-injury net average earnings. This is calculated as follows:

- 1) Adjust pre-accident gross earnings with regard to any inflation factors noting the current statutory limitation.
- 2) Calculate the pre-accident net average earnings from the amount determined in 1) and also the post accident net average earnings by applying the net claim for exemption information from TD-1.
- 3) Deduct the post-accident net average earnings from the pre-accident net average earnings.
- 4) Calculate 90% of the difference determined in 3).

- 5) Convert the amount in 4) to a monthly figure.
- 6) Deduct the value of the monthly escalated pension.
- 7) Convert the figure resulting from the calculation in 6) to a percentage of the permanent disability award which will represent the amount of the supplement for payment processing purposes.

Formula

X = pre-accident escalated net average earnings
Y = post-accident net average earnings
Z = earning loss before pension deduction
P = escalated monthly pension
S = amount payable through supplement

$$X - Y \times .90 \times 4.3333 = Z$$

$$Z - P = S$$

$$\% \text{ supplement} = \frac{S \times 100}{\text{current 100\% monthly pension}}$$

(iii) Maximum amount - OAS upper limit

Section 135(8) provides that the amount of a s.135(4) supplement cannot be more than the amount of a full monthly pension under s.3 of the Old Age Security Act.

Pre-1985 injury

- 1) Calculate the amount of supplement under s.135(9)
- 2) If the amount of the supplement that could be paid, as determined by 1) is equal to or greater than the current amount of the pension for old age security, pay the equivalent to the old age security pension.
- 3) If the amount determined in 1) is less than the current amount of the pension for old age security, pay that amount.
- 4) Convert the amount in either 2) or 3) to a percentage of current permanent disability pension which will represent the amount of the supplement for payment processing purposes.

Pre-1989 injury

- 1) Use the same guidelines outlined for calculating a supplement under s.135(10) (see above)
- 2) If the amount of the supplement that could be paid, as determined by 1) is equal to or greater than the current amount

of the pension for old age security, pay the equivalent to the old age security pension.

- 3) If the amount determined in 1) is less than the current amount of the pension for old age security, pay that amount.
- 4) Convert the amount in either 2) or 3) to a percentage of the current permanent disability pension which will represent the amount of the supplement for payment processing purposes.

Formula

S = amount payable through supplement (as determined under s.135(7) or (8))

A = current amount of pension for old age security.

If $S > A$, then pay A.

OR

if $S < A$, then pay S.

$$\% \text{ supplement} = \frac{A \times 100}{\text{current 100\% monthly pension}} \quad \text{OR} \quad \frac{S \times 100}{\text{current 100\% monthly pension}}$$

(d) Effect of payments under Canada Pension Plan or Quebec Pension Plan on a s.135(4) supplement (s.135(11))

Pre-1985 Injuries

If the worker is in receipt of Canada Pension or Quebec Pension disability payments, in respect to the injury these payments will be deducted from the pre-accident gross average earnings adjusted for inflation creating a revised gross average earnings which can then be converted into the compensation rate. The statutory maximum earnings ceiling applies.

Pre-1989 Injuries

If the worker is in receipt of Canada Pension or Quebec Pension disability payments in respect to the injury, these payments will be deducted from the average earnings adjusted for inflation, creating a revised average earnings from which compensation will be calculated. The statutory maximum earnings ceiling applies.

(e) Period of Payment for a s.135(4) supplement

A s.135(4) supplement shall be paid on a monthly basis, in accordance with the current Board processing system and administrative practice.

(f) Examples of calculations of s.135(4) supplements

Example 1 - Section 135(4) supplement for pre-1985 injury with post-accident earnings

Accident date Dec. 12, 1984

Pre-accident gross average earnings - \$285.00 week

Post accident gross average earnings - \$75.00 week

Escalated 75% pension - \$841.69 month

$$\begin{aligned}
 \$285.00 \times 4.3333 &= 1234.99 \times 5\% \times 1.7\% \times 4.4\% \\
 &\quad \times 4.3\% \times 4.2\% \\
 &= 1496.33 \\
 75.00 \times 4.3333 &= 324.99 \text{ deduct} \\
 &\quad 1171.34 \times .75 \\
 &= 878.50 \\
 \text{deduct monthly P.D.} &- 841.69 \\
 S &= 36.81 \\
 A &= 330.43 \text{ (OAS effective July/89)}
 \end{aligned}$$

Since S is less than A, pay S (see Section 135(8))

$$\begin{aligned}
 \% \text{ supplement} &= \frac{36.81 \times 100}{1122.25} \\
 &= 3.28\%
 \end{aligned}$$

Example 2 - Section 135(4) supplement for pre-1985 injury with C.P.P. deduction

Accident date Oct. 31, 1984

Pre-accident gross average earnings - \$538.46 week

Gross C.P.P. benefit - \$400.00 month

Escalated 10% pension - \$202.94 month

$$\begin{aligned}
 \$538.46 \times 4.3333 &= 2333.31 \times 5\% \times 1.7\% \times 4.4\% \\
 &\quad \times 4.3\% \times 4.2\% \\
 &= 2827.06* \\
 &\quad (*\text{since } 2827.06 \text{ is over statutory} \\
 &\quad \text{maximum currently in use,} \\
 &\quad \text{must use } 2705.88) \\
 &= 2705.88 \\
 \text{deduct CPP} &- 400.00 \text{ (see section 135(11))} \\
 &\quad 2305.88 \\
 \text{deduct monthly P.D.} &\quad 202.94 \\
 S &= 2102.94 \\
 A &= 330.43 \text{ (OAS effective July/89)}
 \end{aligned}$$

Since S is greater than A, pay A (see Section 135(8))

$$\begin{aligned}
 \% \text{ supplement} &= \frac{330.43 \times 100}{2029.41} \\
 &= 16.28\%
 \end{aligned}$$

Example 3 - Section 135(4) supplement for a pre-1989 injury with post-accident earnings

Accident date Jan. 21, 1988
 Pre-accident gross average earnings - \$750.00 week
 Post-accident gross average earnings - \$300.00 week
 Net Claim Code - 03
 Escalated 25% pension - \$507.78

	$\$750.00 \times 4.2\%$
	= 781.50*
	(*since 781.50 is over statutory maximum currently in use, must use \$704.00)
	704.00
	520.80 (pre-acc N.A.E. escalated)
deduct	<u>-254.84 (N.A.E. post acc.)</u>
	265.96 x .90
	= 239.36 x 4.3333
	= 1037.22
deduct monthly P.D.	<u>- 507.78</u>
	S = 529.44
	A = 330.43 (OAS effective July/89)
Since S is greater than A, pay A (see s.135(8))	
% supplement	= $\frac{330.43 \times 100}{2031.12}$
	= <u>16.27%</u>

Example 4 - Section 135(4) supplement for a pre-1989 injury with C.P.P. deduction

Accident date June 16, 1988
 Pre accident gross average earnings - \$425.00 week
 Gross C.P.P. benefit - \$64.00 week
 Net Claim Code - 01
 Escalated 20% pension - \$268.79

	$\$425.00 \times 4.2\%$
	= 442.85
deduct CPP	<u>64.00 (see s.135(11))</u>
	378.85 (revised gross earnings)
	299.37 (revised N.A.E.)
	299.37 x .90
	= 269.43 x 4.3333
	= 1168.52
deduct monthly P.D.	<u>- 268.79</u>
	S = 899.73
	A = 330.43 (OAS effective July/89)
Since S is greater than A, pay A (see s.135(8))	
% supplement	= $\frac{330.43 \times 100}{1343.93}$
	= <u>24.59%</u>

Questions

1. What are your current weekly earnings before taxes, etc.? \$ _____
2. If you are not working, please indicate why: _____
_____ not able to work
_____ can't find work
_____ on lay off
_____ retired
_____ other - explain below
3. At the time you received your pension, were you offered vocational rehabilitation services by the Workers' Compensation Board?

Yes _____ No _____
4. Are you currently receiving vocational rehabilitation assistance from the Workers' Compensation Board? Yes _____ No _____
5. Have you had vocational rehabilitation assistance from the Workers' Compensation Board in the past two years? Yes _____ No _____
6. Did you have vocational rehabilitation assistance from the Workers' Compensation Board more than two years ago? Yes _____ No _____
7. Are you receiving Canada Pension Plan or Quebec Pension Plan Disability Benefits? Yes _____ No _____ If yes, please show the amount. \$ _____

CA20N
L90
-1989
Q71

A D D E N D U M
July 31, 1989

GUIDELINES FOR
THE ADMINISTRATION OF
SECTION 135 OF THE WORKERS' COMPENSATION ACT
TRANSITION SUPPLEMENTS

- ° Whether a worker's entitlement to supplementary benefits will be determined under the pre-bill 162 supplement provisions or the bill 162 provisions will depend on the date the entitlement decision is made.
 - . If the entitlement decision is made prior to the date of Royal Assent (i.e. July 26, 1989) the old rules apply.
 - . If the entitlement decision is made on or after the date of Royal Assent (i.e. July 26, 1989) the new rules apply.
- ° Where the old rules apply, the supplement will be handled as if there were no new rules until the vocational rehabilitation program for which the supplement was granted comes to an end. At that time further entitlement must be determined under the new rules.

REVISION

July 31, 1989

GUIDELINES FOR THE ADMINISTRATION OF SECTION 135 OF THE WORKERS' COMPENSATION ACT TRANSITION SUPPLEMENTS

Page 8

C. SPECIFIC GUIDELINES FOR SECTION 135

1. Section 135(2) Supplements

(f) Maximum amount of a s.135(2) supplement for a worker with a pre-1985 injury

Document Should

Read: Section 135(9) provides that the sum of the supplement, the amount awarded for permanent disability and...

Page 16

C. SPECIFIC GUIDELINES FOR SECTION 135

2. Section 135(4) Supplements

(f) Examples of calculations of s.135(4) supplements

Example 2 - Section 135(4) supplement for pre-1985 injury with C.P.P. deduction

Document Should

Read:

Accident date Oct. 31, 1984

Pre-accident gross average earnings - \$538.46 week

Gross C.P.P. benefit - \$400.00 month

Escalated 10% pension - \$202.94 month

$$\begin{aligned} \$538.46 \times 4.3333 &= 2333.31 \times 5\% \times 1.7\% \times 4.4\% \\ &\quad \times 4.3\% \times 4.2\% \\ &= 2827.06* \\ &(*\text{since } 2827.06 \text{ is over statutory} \\ &\quad \text{maximum currently in use,} \\ &\quad \text{must use } 2705.88) \end{aligned}$$

$$\begin{array}{rcl} & \$2705.88 & \\ \text{deduct CPP} & \underline{- 400.00} & \text{(see section 135(11))} \\ & 2305.88 \times .75 & <=== \\ & = 1729.41 & <=== \\ \text{deduct monthly P.D.} & \underline{- 202.94} & <=== \\ & S = 1526.47 & <=== \end{array}$$

$$\begin{aligned} A &= 330.43 \text{ (OAS effective July/89)} \\ \text{Since } S \text{ is greater than } A, \text{ pay } A \text{ (see Section 135(8))} \\ \% \text{ supplement} &= \frac{330.43 \times 100}{2029.41} \\ &= 16.28\% \end{aligned}$$



**Workers'
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**Commission
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du travail**

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September 1, 1989

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Indiquez le n° de dossier
dans toute correspondance
avec la Commission



Dear Sir/Madam:

Attached is an addendum to the transition guidelines previously sent to you on July 26, 1989.

The addendum contains information not previously included in the guidelines respecting the calculation of a worker's post-injury average earnings for the purpose of calculating the amount of a supplement under section 135.

If you have questions about these materials or any other aspect of the guidelines, please call the Workers' Compensation Board's hotline - 926-8444 for Toronto area callers and 1-800-387-5520 for callers outside Toronto.

Yours very truly,

Paul Holyoke
Director
Operational Policy Branch

ADDENDUM
GUIDELINES FOR
THE ADMINISTRATION OF
SECTION 135 OF THE WORKERS' COMPENSATION ACT
TRANSITION SUPPLEMENTS

- o Subsections 135(9) and (10) of the Act require the Board to determine the amount of a worker's post-injury average earnings in order to calculate the amount of the supplement that may be provided under section 135.
- o In order to determine the amount of a worker's average earnings, the following steps should be taken:
 - 1. When a worker has current earnings, such earnings will be considered to be the average earnings.
 - 2. When the worker has no current earnings, the following approach should be taken:
 - (a) evaluate the worker's average earnings in the first three years following the last pension rating. This will require the calculation of the total earnings over the period which is then divided by 36 months.
 - (b) If the worker left the workforce prior to the end of the three year period following the last rating, then an inquiry must be made as to whether the departure from the workforce was related in any way to the compensable disability. In cases where the worker has returned the questionnaire, the inquiry will usually be required when the worker has checked the "retired" box or has checked the "other" box with insufficient explanation of the cause .
 - (c) If the reason for the worker's departure from the workforce is related in whole or in part to the compensable impairment, then the earnings of the worker over the three year period since the last rating should continue to be divided by 36 months. This would include the periods of time when the worker was not employed.
 - (d) If the reason the worker left the workforce was unrelated to the compensable disability, the earnings of the worker over the three year period since last rating will be divided by the number of months actually worked by the worker.
 - (e) If the worker's last rating was less than three years prior to the application for a supplement, then the post-injury earnings should be calculated utilizing the time period since the last rating in the same manner as above.

- (f) In the event a worker has never returned to the workforce for reasons unrelated to the disability, a vocational assessment may be required. If there is insufficient information in the claim file to assess the worker's post-injury earning capacity, the assessment will likely be required.
- (g) In the event that the three year period is not representative of the worker's post injury earnings, a longer period may be utilized to assess average earnings. This may, if required, cover the entire period from the last rating to the present time.

EXAMPLES

- I. Worker left workforce 18 months after rating due to effects of the injury and has not returned to employment.

total earnings over 36 months = 40,000
divided by ----- 36
1,111.11 average monthly earnings.

- II. Worker left workforce 18 months after rating for reasons unrelated to the effects of the injury.

total earnings over 36 months = 40,000
divided by ----- 18
2,222.22 average monthly earnings



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November 17, 1989

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avec la Commission.

Dear Madam/Sir:

An Addendum to the Guidelines for the Administration of Section 135 of the Workers' Compensation Act regarding transition supplements, released September 1, 1989, was produced to help establish a worker's average earnings in situations when the worker had no current earnings.

It has become apparent, however, that the Addendum raises a number of difficulties. Some of the concerns that have arisen are:

- ° the potential difference in the calculation of average earnings as between workers currently employed and those no longer in employment;
- ° the apparent use of the determination of average earnings as a basis for assessing whether the worker's wage loss is the result of the compensable disability.

As a result of these concerns, this previous Addendum is rescinded in its entirety, with the attached Addendum replacing it.

You will appreciate that the Transition Guidelines have been developed in a short period of time, and that they represent the best attempt at interpreting complex legislation. As the Board becomes more familiar with the legislation, there may be additional refinements to the Guidelines.

Yours very truly,

Paul Holyoke
Director

Operational Policy Branch

ADDENDUM
GUIDELINES FOR
THE ADMINISTRATION OF
SECTION 135 OF THE WORKERS' COMPENSATION ACT
TRANSITION SUPPLEMENTS

- ° Since the Act is designed to provide compensation for disabilities resulting from work-related injuries, entitlement to a supplement under section 135 will only arise when the wage loss suffered by a worker results from such disability.
- ° Therefore, in all cases where a worker has applied for a supplement under section 135, the Board will assess whether the worker's wage loss is related in whole or in part to the compensable disability.
- ° Provided the relationship between the wage loss and the disability can be established, the worker's earnings at the time of the worker's application for the supplement will be utilized for the purpose of calculating the amount of the supplement pursuant to sections 135(9) and (10) of the Act.
- ° If the worker has left the workforce for reasons unrelated to the disability, there is no entitlement to a supplement.

November 8, 1989

